

The Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
SEAN D. SULLIVAN,  
Defendant.

NO. CR18-5273BHS

**PLEA AGREEMENT**

The United States of America, by and through Brian T. Moran, United States Attorney for the Western District of Washington, and Matthew P. Hampton, Assistant United States Attorney for said District, Defendant SEAN D. SULLIVAN, and Defendant's attorney, Phil Brennan, enter into the following Plea Agreement, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(A), (B).

1. **The Charges.** Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enters a plea of guilty to the following charges contained in the Indictment: Possession of Child Pornography, as charged in Counts 2 and 3, in violation of Title 18, United States Code, Section 2252(a)(4)(B), (b)(2).

1 By entering a plea of guilty, Defendant hereby waives all objections to the form of  
 2 the charging document. Defendant further understands that before entering any guilty  
 3 plea, Defendant will be placed under oath. Any statement given by Defendant under oath  
 4 may be used by the United States in a prosecution for perjury or false statement.

5 The government agrees to dismiss any remaining counts at the time of sentencing.

6 2. **Elements of the Offenses.** The elements of the offenses to which  
 7 Defendant is pleading guilty, Possession of Child Pornography, as charged in Counts 2  
 8 and 3, are as follows:

9 *First*, the defendant knowingly possessed matter that the defendant knew  
 10 contained visual depictions of minors engaged in sexually explicit conduct;

11 *Second*, the defendant knew each visual depiction contained in the matter  
 12 was of minors engaged in sexually explicit conduct;

13 *Third*, the defendant knew that production of such visual depictions  
 14 involved the use of a minor engaged in sexually explicit conduct; and

15 *Fourth*, each visual depiction had been either transported in interstate or  
 16 foreign commerce, or produced using material that had been transported in interstate or  
 17 foreign commerce by computer or other means.

18 3. **The Penalties.** Defendant understands that the statutory penalties  
 19 applicable to the offenses to which Defendant is pleading guilty are as follows:

20 a. For the offense of Possession of Child Pornography, as charged in  
 21 Counts 2 and 3: A maximum term of imprisonment of up to 10 years, a fine of up to  
 22 \$250,000, a period of supervision following release from prison of not less than 5 years  
 23 and up to life, a mandatory special assessment of \$100, and a \$5,000.00 penalty  
 24 assessment unless the defendant is indigent. If a probationary sentence is imposed, the  
 25 probation period can be for up to five (5) years.

26 Defendant understands that supervised release is a period of time following  
 27 imprisonment during which Defendant will be subject to certain restrictive conditions and  
 28 requirements. Defendant further understands that, if supervised release is imposed and

1 Defendant violates one or more of the conditions or requirements, Defendant could be  
 2 returned to prison for all or part of the term of supervised release that was originally  
 3 imposed. This could result in Defendant serving a total term of imprisonment greater  
 4 than the statutory maximum stated above.

5 Defendant understands that as a part of any sentence, in addition to any term of  
 6 imprisonment and/or fine that is imposed, the Court may order Defendant to pay  
 7 restitution to any victim of the offenses to which he is pleading guilty.

8 Defendant further understands that the consequences of pleading guilty may  
 9 include the forfeiture of certain property, either as a part of the sentence imposed by the  
 10 Court, or as a result of civil judicial or administrative process.

11 Defendant agrees that any monetary penalty the Court imposes, including the  
 12 special assessment, fine, costs, or restitution, is due and payable immediately and further  
 13 agrees to submit a completed Financial Statement of Debtor form as requested by the  
 14 United States Attorney's Office.

15 **4. Immigration Consequences.** Defendant recognizes that pleading guilty  
 16 may have consequences with respect to Defendant's immigration status if Defendant is  
 17 not a citizen of the United States. Under federal law, a broad range of crimes are grounds  
 18 for removal, and some offenses make removal from the United States presumptively  
 19 mandatory. Removal and other immigration consequences are the subject of a separate  
 20 proceeding, and Defendant understands that no one, including Defendant's attorney and  
 21 the Court, can predict with certainty the effect of a guilty plea on immigration status.  
 22 Defendant nevertheless affirms that Defendant wants to plead guilty regardless of any  
 23 immigration consequences that Defendant's guilty plea may entail, even if the  
 24 consequence is Defendant's mandatory removal from the United States.

25 **5. Rights Waived by Pleading Guilty.** Defendant understands that by  
 26 pleading guilty, Defendant knowingly and voluntarily waives the following rights:

27 a. The right to plead not guilty and to persist in a plea of not guilty;  
 28

1                   b.     The right to a speedy and public trial before a jury of Defendant's  
2 peers;

3                   c.     The right to the effective assistance of counsel at trial, including, if  
4 Defendant could not afford an attorney, the right to have the Court appoint one for  
5 Defendant;

6                   d.     The right to be presumed innocent until guilt has been established  
7 beyond a reasonable doubt at trial;

8                   e.     The right to confront and cross-examine witnesses against Defendant  
9 at trial;

10                  f.     The right to compel or subpoena witnesses to appear on Defendant's  
11 behalf at trial;

12                  g.     The right to testify or to remain silent at trial, at which trial such  
13 silence could not be used against Defendant; and

14                  h.     The right to appeal a finding of guilt or any pretrial rulings.

15         6.     **United States Sentencing Guidelines.** Defendant understands and  
16 acknowledges that the Court must consider the sentencing range calculated under the  
17 United States Sentencing Guidelines and possible departures under the Sentencing  
18 Guidelines together with the other factors set forth in Title 18, United States Code,  
19 Section 3553(a), including: (1) the nature and circumstances of the offense; (2) the  
20 history and characteristics of Defendant; (3) the need for the sentence to reflect the  
21 seriousness of the offense, to promote respect for the law, and to provide just punishment  
22 for the offense; (4) the need for the sentence to afford adequate deterrence to criminal  
23 conduct; (5) the need for the sentence to protect the public from further crimes of  
24 Defendant; (6) the need to provide Defendant with educational and vocational training,  
25 medical care, or other correctional treatment in the most effective manner; (7) the kinds  
26 of sentences available; (8) the need to provide restitution to victims; and (9) the need to  
27 avoid unwarranted sentence disparity among defendants involved in similar conduct who  
28 have similar records. Accordingly, Defendant understands and acknowledges that:

1           a.       The Court will determine Defendant's Sentencing Guidelines range  
2 at the time of sentencing;

3           b.       After consideration of the Sentencing Guidelines and the factors in  
4 18 U.S.C. § 3553(a), the Court may impose any sentence authorized by law, up to the  
5 maximum term authorized by law;

6           c.       The Court is not bound by any recommendation regarding the  
7 sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines  
8 range offered by the parties or the United States Probation Department, or by any  
9 stipulations or agreements between the parties in this Plea Agreement; and

10          d.       Defendant may not withdraw a guilty plea solely because of the  
11 sentence imposed by the Court.

12          7.       **Ultimate Sentence.** Defendant acknowledges that no one has promised or  
13 guaranteed what sentence the Court will impose.

14          8.       **Statement of Facts.** The parties agree on the following facts. Defendant  
15 admits Defendant is guilty of the charged offenses:

16           In July 2017 and again in November 2017, in Cowlitz County, SEAN D.  
17 SULLIVAN knowingly and intentionally possessed different matter that he knew  
18 contained visual depictions of actual minors engaged in sexually explicit conduct. Among  
19 these visual depictions are the images described below:

20  
21           **1339857\_0.jpg:** This image depicts an early pubescent female under the age of  
22 thirteen lying on her back. The child is wearing a blue shirt that has lace  
23 transparent stripes. The child's breasts are clearly visible through the lace stripes.  
24 The child has minimal breast development. The child is nude from the waist down  
25 except for knee high socks. She has her legs bent at the knees and spread apart  
26 exposing her vagina. The child has no visible pubic hair. There is a nude adult  
27 male kneeling between the child's legs and he has his erect penis inserted into her  
28 vagina.

**ecd69c9b8e95fb186c243cb0581fff7f21ec65f9.jpg:** This image depicts a nude  
early pubescent female under the age of fifteen lying on her back on a patterned  
sofa. The child has minimal breast development and minimal pubic hair. The

1 child's legs are spread apart and her left leg is pulled back and appears to be  
2 bent at the knee. There is a nude adult male inserting his erect penis into the  
3 child's vagina.

4 Each of the visual depictions possessed by SULLIVAN was produced using material that  
5 had been shipped or transported in interstate or foreign commerce or previously shipped  
6 in interstate or foreign commerce.

7 SULLIVAN acknowledges that the digital devices identified below in Paragraph  
8 12 were used to facilitate the crimes to which he is pleading guilty by allowing him to  
9 access or store visual depictions of minors engaged in sexually explicit conduct.

10 The parties agree that the Court may consider additional facts contained in the  
11 Presentence Report (subject to standard objections by the parties) and/or that may be  
12 presented by the United States or Defendant at the time of sentencing, and that the factual  
13 statement contained herein is not intended to limit the facts that the parties may present to  
14 the Court at the time of sentencing.

15 9. **Agreed Recommendation Regarding Imprisonment.** Pursuant to  
16 Federal Rule of Criminal Procedure 11(c)(1)(B), the parties agree to recommend a total  
17 term of imprisonment that is between 72 months and 120 months. Defendant understands  
18 that these recommendations are not binding on the Court and the Court may reject the  
19 recommendations of the parties and may impose any term of imprisonment up to the  
20 statutory maximum penalty authorized by law. Defendant further understands that  
21 Defendant cannot withdraw a guilty plea simply because of the sentence imposed by the  
22 Court. Except as otherwise provided in this Plea Agreement, the parties are free to  
23 present arguments regarding any other aspect of sentencing.

24 10. **Acceptance of Responsibility.** At sentencing, *if* the Court concludes  
25 Defendant qualifies for a downward adjustment acceptance for acceptance of  
26 responsibility pursuant to USSG § 3E1.1(a) and Defendant's offense level is 16 or  
27 greater, the United States will make the motion necessary to permit the Court to decrease  
28 the total offense level by three (3) levels pursuant to USSG § 3E1.1(a) and (b), because

1 Defendant has assisted the United States by timely notifying the United States of  
2 Defendant's intention to plead guilty, thereby permitting the United States to avoid  
3 preparing for trial and permitting the Court to allocate its resources efficiently.

4       11.     **Restitution.** Defendant agrees that the Court can order Defendant to pay  
5 restitution to the victims of Defendant's crimes and, in exchange for the agreements by  
6 the United States contained in this plea agreement, Defendant agrees that restitution in  
7 this case should not be limited to the offense of conviction. Defendant is aware that the  
8 United States will present evidence supporting an order of restitution for all losses caused  
9 by all of Defendant's criminal conduct known to the United States at the time of  
10 Defendant's guilty plea to include those losses resulting from crimes not charged or  
11 admitted by Defendant in the Statement of Facts or counts to be dismissed as part of this  
12 Plea Agreement, including Count 1 of the Indictment. In exchange for the promises by  
13 the United States contained in this plea agreement, Defendant agrees that Defendant will  
14 be responsible for any order by the District Court requiring the payment of restitution for  
15 such losses.

16             a.       The full amount of restitution shall be due and payable immediately  
17 on entry of judgment and shall be paid as quickly as possible. If the Court finds that the  
18 defendant is unable to make immediate restitution in full and sets a payment schedule as  
19 contemplated in 18 U.S.C. § 3664(f), Defendant agrees that the Court's schedule  
20 represents a minimum payment obligation and does not preclude the U.S. Attorney's  
21 Office from pursuing any other means by which to satisfy the defendant's full and  
22 immediately-enforceable financial obligation, including, but not limited to, by pursuing  
23 assets that come to light only after the district court finds that the defendant is unable to  
24 make immediate restitution.

25             b.       Defendant agrees to disclose all assets in which Defendant has any  
26 interest or over which Defendant exercises control, directly or indirectly, including those  
27 held by a spouse, nominee, or third party. Defendant agrees to cooperate fully with the  
28 United States' investigation identifying all property in which Defendant has an interest

1 and with the United States' lawful efforts to enforce prompt payment of the financial  
 2 obligations to be imposed in connection with this prosecution. Defendant's cooperation  
 3 obligations are: (1) before sentencing, and no more than 30 days after executing this Plea  
 4 Agreement, truthfully and completely executing a Financial Disclosure Statement  
 5 provided by the United States Attorney's Office and signed under penalty of perjury  
 6 regarding Defendant's and Defendant's spouse's financial circumstances and producing  
 7 supporting documentation, including tax returns, as requested; (2) providing updates  
 8 with any material changes in circumstances, as described in 18 U.S.C. § 3664(k), within  
 9 seven days of the event giving rise to the changed circumstances; (3) authorizing the  
 10 United States Attorney's Office to obtain Defendant's credit report before sentencing; (4)  
 11 providing waivers, consents or releases requested by the U.S. Attorney's Office to access  
 12 records to verify the financial information; (5) authorizing the U.S. Attorney's Office to  
 13 inspect and copy all financial documents and information held by the U.S. Probation  
 14 Office; (6) submitting to an interview regarding Defendant's Financial Statement and  
 15 supporting documents before sentencing (if requested by the United States Attorney's  
 16 Office), and fully and truthfully answering questions during such interview; and (7)  
 17 notifying the United States Attorney's Office before transferring any interest in property  
 18 owned directly or indirectly by Defendant, including any interest held or owned in any  
 19 other name, including all forms of business entities and trusts.

20 c. The parties acknowledge that voluntary payment of restitution prior  
 21 to the adjudication of guilt is a factor the Court considers in determining whether  
 22 Defendant qualifies for acceptance of responsibility pursuant to USSG § 3E1.1(a). In  
 23 addition, in any event, the government will consider Defendant's cooperation regarding  
 24 restitution in making its sentencing recommendation.

25 12. **Forfeiture.** The Defendant understands that the forfeiture of property is  
 26 part of the sentence that must be imposed in this case. The Defendant agrees to forfeit to  
 27 the United States immediately his right, title, and interest in all property he used to  
 28 commit or to facilitate his commission of the identified offense, any proceeds of the

1 offense, and any data files consisting of or containing visual depictions within the  
 2 meaning of 18 U.S.C. § 2253(a)(1). All such property is forfeitable pursuant to Title 18,  
 3 United States Code, Section 2253(a), and includes but is not limited to:

4 a. One Motorola G4 smartphone seized from SEAN D. SULLIVAN on  
 5 or about July 26, 2017; and

6 b. One LG smartphone seized from SEAN D. SULLIVAN on or about  
 7 November 20, 2017.

8 The Defendant agrees to fully assist the United States in the forfeiture of this  
 9 property and to take whatever steps are necessary to pass clear title to the United States,  
 10 including but not limited to: surrendering title and executing any documents necessary to  
 11 effect forfeiture; assisting in bringing any property located outside the United States  
 12 within the jurisdiction of the United States; and taking whatever steps are necessary to  
 13 ensure that property subject to forfeiture is not sold, disbursed, wasted, hidden, or  
 14 otherwise made unavailable for forfeiture. The Defendant agrees not to file a claim to this  
 15 property in any federal forfeiture proceeding, administrative or judicial, that may be or  
 16 has been initiated, or to otherwise contest any federal forfeiture proceeding that may be  
 17 or has been initiated. The Defendant also agrees he will not assist any party who may file  
 18 a claim to this property in any federal forfeiture proceeding.

19 The United States reserves its right to proceed against any remaining property not  
 20 identified in this Plea Agreement, including any property in which Defendant has any  
 21 interest or control, if the Defendant used that property to commit or to facilitate his  
 22 commission of the identified offense.

23 13. **Abandonment of Non-Contraband Data Files.** The Defendant abandons  
 24 any interest he may have in any non-contraband data files contained on the electronic  
 25 devices identified in Paragraph 13, and he consents to the federal administrative  
 26 disposition of those data files, including their destruction.

27 14. **Registration as a Sex Offender.** Defendant stipulates and agrees that  
 28 based on the Sex Offender Registration and Notification Act, Title 42, United States

Code, Section 16911 et seq., he is entering a plea of guilty to a sex offense and is a sex offender as those terms are defined in the Act. The Defendant further agrees that pursuant to the Act, he is required to register as a sex offender, and keep the registration current, in each jurisdiction where the Defendant resides, is an employee, and is a student. The Defendant further agrees that for initial registration purposes only, the Defendant is required also to register in the jurisdiction in which the Defendant is convicted if such jurisdiction is different from the jurisdiction of residence.

15. **Non-Prosecution of Additional Offenses.** As part of this Plea Agreement, the United States Attorney's Office for the Western District of Washington agrees not to prosecute Defendant for any additional offenses known to it as of the time of this Plea Agreement based upon evidence in its possession at this time, and that arise out of the conduct giving rise to this investigation. In this regard, Defendant recognizes the United States has agreed not to prosecute all of the criminal charges the evidence establishes were committed by Defendant solely because of the promises made by Defendant in this Plea Agreement. Defendant agrees, however, that for purposes of preparing the Presentence Report, the United States Attorney's Office will provide the United States Probation Office with evidence of all conduct committed by Defendant.

Defendant agrees that any charges to be dismissed before or at the time of sentencing were substantially justified in light of the evidence available to the United States, were not vexatious, frivolous or taken in bad faith, and do not provide Defendant with a basis for any future claims under the "Hyde Amendment," Pub. L. No. 105-119 (1997).

16. **Breach, Waiver, and Post-Plea Conduct.** Defendant agrees that, if Defendant breaches this Plea Agreement, the United States may withdraw from this Plea Agreement and Defendant may be prosecuted for all offenses for which the United States has evidence. Defendant agrees not to oppose any steps taken by the United States to nullify this Plea Agreement, including the filing of a motion to withdraw from the Plea Agreement. Defendant also agrees that, if Defendant is in breach of this Plea Agreement,

1 Defendant has waived any objection to the re-institution of any charges that previously  
2 were dismissed or any additional charges that had not been prosecuted.

3 Defendant further understands that if, after the date of this Plea Agreement,  
4 Defendant should engage in illegal conduct, or conduct that violates any conditions of  
5 release or the conditions of confinement (examples of which include, but are not limited  
6 to, obstruction of justice, failure to appear for a court proceeding, criminal conduct while  
7 pending sentencing, and false statements to law enforcement agents, the Pretrial Services  
8 Officer, Probation Officer, or Court), the United States is free under this Plea Agreement  
9 to file additional charges against Defendant or to seek a sentence that takes such conduct  
10 into consideration by requesting the Court to apply additional adjustments or  
11 enhancements in its Sentencing Guidelines calculations in order to increase the applicable  
12 advisory Guidelines range, and/or by seeking an upward departure or variance from the  
13 calculated advisory Guidelines range. Under these circumstances, the United States is  
14 free to seek such adjustments, enhancements, departures, and/or variances even if  
15 otherwise precluded by the terms of the Plea Agreement.

16 **17. Waiver of Appellate Rights and Rights to Collateral Attacks.**

17 Defendant acknowledges that, by entering the guilty plea required by this Plea  
18 Agreement, Defendant waives all rights to appeal from Defendant's conviction, and any  
19 pretrial rulings of the Court, and any rulings of the Court made prior to entry of the  
20 judgment of conviction. Defendant further agrees that, provided the Court imposes a  
21 custodial sentence that does not exceed 120 months, Defendant waives to the full extent  
22 of the law:

23 a. Any right conferred by Title 18, United States Code, Section 3742,  
24 to challenge, on direct appeal, the sentence imposed by the Court, including any fine,  
25 restitution order, probation or supervised release conditions, or forfeiture order (if  
26 applicable); and  
27  
28

b. Any right to bring a collateral attack against the conviction and sentence, including any restitution order imposed, except as it may relate to the effectiveness of legal representation; and

This waiver does not preclude Defendant from bringing an appropriate motion pursuant to 28 U.S.C. § 2241, to address the conditions of Defendant's confinement or the decisions of the Bureau of Prisons regarding the execution of Defendant's sentence.

If Defendant breaches this Plea Agreement at any time by appealing or collaterally attacking (except as to effectiveness of legal representation) the conviction or sentence in any way, the United States may prosecute Defendant for any counts, including those with mandatory minimum sentences, that were dismissed or not charged pursuant to this Plea Agreement.

18. **Voluntariness of Plea.** Defendant agrees that Defendant has entered into this Plea Agreement freely and voluntarily, and that no threats or promises were made to induce Defendant to enter a plea of guilty other than the promises contained in this Plea Agreement or set forth on the record at the change of plea hearing in this matter.

19. **Statute of Limitations.** In the event this Plea Agreement is not accepted by the Court for any reason, or Defendant breaches any of the terms of this Plea Agreement, the statute of limitations shall be deemed to have been tolled from the date of the Plea Agreement to: (1) thirty (30) days following the date of non-acceptance of the Plea Agreement by the Court; or (2) thirty (30) days following the date on which a breach of the Plea Agreement by Defendant is discovered by the United States Attorney's Office.

20. **Completeness of Agreement.** The United States and Defendant acknowledge that these terms constitute the entire Plea Agreement between the parties, except as may be set forth on the record at the change of plea hearing in this matter. This Agreement binds only the United States Attorney's Office for the Western District of Washington. It does not bind any other United States Attorney's Office or any other office or agency of the United States, or any state or local prosecutor.

1  
2 Dated this 26th day of July, 2021.  
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5 SEAN D SULLIVAN  
6 Defendant

  
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8 PHIL BRENNAN  
9 Attorney for Defendant

10  
11 *s/ Matthew P. Hampton for*  
12 GRADY J. LEUPOLD  
Assistant United States Attorney

13  
14 *s/ Matthew P. Hampton*  
15 MATTHEW P. HAMPTON  
16 Assistant United States Attorney  
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